

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PRENTICE FOREMAN,

Petitioner,

v.

TRENT ALLEN,

Respondent.

Case No.: 1:23-cv-00390 JLT EPG (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, DENYING PETITIONER'S
REQUEST FOR STAY, DIRECTING CLERK
OF COURT TO CLOSE CASE, AND
DECLINING TO ISSUE CERTIFICATE OF
APPEALABILITY

(Docs. 1, 23, 24)

Prentice Foreman is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. (Doc. 1.) The assigned magistrate judge found that Petitioner did not raise a colorable cumulative error claim and his request for stay was not warranted. (Doc. 24 at 48-49.) Accordingly, the magistrate judge recommended the petition for habeas corpus and Petitioner's request for a stay be denied. (*Id.* at 49.)

The Court served the Findings and Recommendations on Petitioner and notified him that any objections were due within 30 days. (Doc. 24 at 50.) The Court advised him that the "failure to file objections within the specified time may waive the right to appeal the District Court's order." (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).) Petitioner did not file objections, and the time to do so has passed. According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this case. Having carefully reviewed the matter, the Court

1 concludes the Findings and Recommendations are supported by the record and proper analysis.

2 Having found that Petitioner is not entitled to habeas relief, the Court also declines to
3 issue a certificate of appealability in connection with his 28 U.S.C. § 2254 motion. A court may
4 issue a certificate of appealability where the moving party has “made a substantial showing of the
5 denial of a constitutional right.” 28 U.S.C.A. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322,
6 327 (2003). If a court denies a habeas petition on the merits, a certificate of appealability will
7 only issue “if jurists of reason could disagree with the district court’s resolution of [the
8 petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate
9 to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327 (citing *Slack v.*
10 *McDaniel*, 529 U.S. 473, 484 (2000)). While the petitioner is not required to prove the merits of
11 his case, he must demonstrate “that reasonable jurists would find the district court’s assessment of
12 the constitutional claims debatable or wrong.” *Id.* at 323-24 (citing *Slack*, 529 U.S. at 1039-1040).
13 This requires proof of “something more than the absence of frivolity or the existence of mere
14 good faith on his or her part.” *Id.* at 338 (internal quotation marks omitted).

15 The Court finds that reasonable jurists would not find the Court’s determination that the
16 petition should be denied is debatable or wrong, or that Petitioner should be allowed to proceed
17 further. Petitioner has not made the required “substantial showing” of the denial of a
18 constitutional right. 28 U.S.C.A. § 2253(c)(2). For this reason, the Court declines to issue a
19 certificate of appealability. Thus, the Court **ORDERS**:

- 20 1. The Findings and Recommendations issued on November 7, 2023 (Doc. 24) are
21 **ADOPTED** in full.
- 22 2. The petition for writ of habeas corpus (Doc. 1) is **DENIED**.
- 23 3. Petitioner’s request for a stay (Doc. 23) is **DENIED**.
- 24 4. The Clerk of Court is directed to close the case.
- 25 5. The Court **DECLINES** to issue a certificate of appealability.

26
27 IT IS SO ORDERED.

28 Dated: **January 25, 2024**


UNITED STATES DISTRICT JUDGE